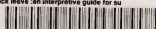


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# SICK LEAVE

An Interpretive Guide for Supervisors and Employees

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Compiled by

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Department of Administration

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## SICK LEAVE AN INTERPRETIVE GUIDE FOR SUPERVISOR AND EMPLOYEE

Most sick leave absences occur because an employee is ill or seeking preventative care from a health care professional, when a care provider is unavailable for a sick child or other ill dependent, or because one of life's many health-related emergencies needs attention.

Montana state government recognizes the need for sick leave benefits and the importance of managing absences from the workplace. The considerable financial and emotional costs of excessive absence—to both managers and employees—can be reduced with increased awareness about appropriate use of sick leave and related benefits, thoughtful planning by employees and follow-up by managers. This guide provides an overview of state government policies and practices. It includes guidelines for supervisors and employees that will help manage the impact that absences may have on production and other people in the workplace.

### *What is "Sick Leave"?*

"Sick leave" is the benefit provided for state employees that allows a leave of absence with pay for a sickness suffered by the employee or an immediate family member. There is no limit to the amount of sick leave that an employee may accrue. The possibility of financial hardship for the employee in the event of catastrophic illness is reduced if the employee has a substantial sick leave balance.

Eligibility and Rate Earned: All employees are eligible to earn sick leave credits. An employee must be continuously employed for the qualifying period of 90 calendar days in order to use sick leave.

State employees earn 12 days of paid sick leave each year. Part-time employees earn sick leave on a pro-rated basis.

According to state policy (3-0310, Montana Operation Manual, Vol. III), sick leave credits must be taken in one-half hour increments. Accrual and use of sick leave credits appear on your paycheck stub or payroll advice form. Your personnel representative will provide more specific information about recordkeeping practices.

Sick leave is paid at the employee's current rate of pay. Sick leave that is not used accrues until an individual leaves state employment or it transfers with an employee when he or she accepts employment with another state agency.

Upon termination from state employment, an employee is entitled to cash compensation for unused sick leave credits equal to one-fourth of the compensation



the employee would have received if the employee had used the credits at current rate of pay, provided the employee has completed the 90-day qualifying period.

**Definitions:** "Sick Leave" means a leave of absence with pay for a sickness suffered by employee, immediate family, or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606, MCA.

"Immediate Family" means the employee's spouse and any member of the employee's household, or any parent, child, grandparent, grandchild or corresponding in-law. (An agency may approve the use of sick leave to provide necessary care or attendance to another relative for conditions listed in the Sick Leave Policy.)

***Under what conditions may an employee use sick leave?***

State policy specifies the conditions for which sick leave may be requested. Each request will be judged by the agency in accordance with provisions of the state's Sick Leave Policy and related agency policies. For example, the employee's supervisor may require medical certification to determine that the use of sick leave is appropriate or that a family member requires the immediate supervision of an employee.

ARM 2.21.132 establishes the conditions for use of sick leave:

1. Illness;
2. Injury;
3. Medical disability;
4. Maternity-related disability, including prenatal care, birth, miscarriage, abortion, or other medical care for either employee or child;
5. Parental leave;
6. Quarantine resulting from exposure to contagious disease;
7. Medical, dental, or eye examination or treatment;
8. Necessary care of, or attendance to, an immediate family member, or at the department's discretion, another relative, for the above reasons until other attendance can reasonably be obtained; and
9. Death or funeral attendance for an immediate family member or, at the department's discretion, for another person.

If there is a question about whether or not a request for leave is provided for in the Sick Leave Policy, contact your immediate supervisor or your personnel representative.

**Requests for Leave:** Employees may reduce the impact of an absence by careful planning. The following list provides general guidelines for requesting and scheduling sick leave:



- Request to use sick leave before the start of a regularly scheduled shift and provide as much advance notice as possible. Twenty-four to 48 hours is a reasonable amount of advance notice for a non-emergency appointment.
- Speak directly with your supervisor or person designated by your supervisor. Avoid leaving messages to reduce the possibility of a misunderstanding.
- Provide the following information:
  - The date and anticipated length of an absence;
  - The reason for your request; and
  - Information about projects, appointments or unfinished business that require attention during your absence.
- Schedule medical, dental, or eye appointments outside of regularly scheduled work hours or during a lunch break; otherwise, schedule the appointment near the beginning or end of the work day. If an absence is scheduled, for example, an examination or other appointment, provide as much advance notice as possible.
- Become knowledgeable about the conditions for which sick leave may be used—read the state's Sick Leave Policy, 3-0310, MOM, Vol. III, and your agency policy.
- Misrepresenting the reason for using sick leave is considered abuse and may result in disciplinary actions including termination. If sick leave is not appropriate in a situation, request other leave such as annual or compensatory time. Again, remember to seek approval for leave from your supervisor in advance.
- Excessive use of sick leave hinders the quality and efficiency of the service provided by an agency. The fact that any absence affects a work unit makes it difficult to define "excessive" when we talk about sick leave. Ask yourself the following questions to determine if your use of sick leave may be excessive:
  - 1) Have you been absent for three days or longer? If so, how does your use of sick leave match sick leave requests from other employees under similar conditions?
  - 2) How much sick leave remains in your sick leave balance? If you find that you are using leave as you earn it and have little or no balance, you are impacting the productivity of your work unit on a regular basis. Also, the financial benefits of a larger leave balance will not be available in the case of a medical emergency or long-term medical leave.



- 3) When you request sick leave, is it often for short periods of time? If so, examine the reasons for your request to use sick leave. If the absences are for appointments, examine the possibility of making up absent work hours or scheduling appointments outside of work hours. Short absences that routinely occur at the beginning of a shift may be an attempt to cover tardiness. If that is the case, your supervisor may be able to help you balance your scheduling needs.

Montana state government recognizes that absences due to illness and medically-related situations are often unavoidable. Accordingly, each employee is provided paid leave to cover these absences. The more sick leave you build up, or "bank", the more you are assured financial coverage in the case of an extended illness or injury.

All absences directly affect the quality of service that an agency provides. Indirectly, absences cost everyone as we pay extra to cover lowered productivity. Preventing unnecessary or excessive absences is an essential part of the goal to provide efficient, high quality services and products.

Coupled with advance employee planning, one of the most cost-effective approaches to managing sick leave is effective supervision. The following list provides supervisors and managers with guidance for monitoring sick leave use:

- Request employees who call in sick to talk directly to you. This helps avoid miscommunication.
- Establish clear guidelines for employees regarding requests for sick leave. Keep a checklist of the guidelines by your phone so that you have a reference when an employee requests to use sick leave.
- Establish a method for documenting absences and periodically review it with the employee. For instance, maintaining a calendar for each employee that documents absences provides a visual picture of the absences and any patterns that may develop. Establish a review schedule, such as during the performance appraisal meeting.
- Misrepresentation of the actual reason for charging an absence to sick leave or chronic, persistent, or patterned use of sick leave constitute abuse of the benefit. Abuse is subject to progressive discipline, up to termination and forfeiture of the lump sum payment.
- Communicate with the employee as soon as you notice a job-related problem resulting from absences due to sick leave or you identify a pattern of absences or abuse of sick leave. Develop an awareness about the employee's situation. It may be possible to address the problem through other personnel practices



such as developing an alternate schedule, job sharing, part-time work or referral for an outside assessment of the employee's personal or medical needs.

Examples of patterns of sick leave use that may indicate a problem includes, but are not limited to:

- Absences occur regularly on the same day of the week, especially immediately before or following weekends, holidays, or the "last day of a vacation" and,
- Sick leave is regularly requested at the beginning of a shift to cover tardiness, oversleeping, etc.
- Excessive and chronic absences can create productivity or morale problems in a work unit and warrant informal or corrective counseling. Formal disciplinary actions, including termination, may be taken if initial steps don't solve the problem.
- Develop a plan for early intervention to identify and attempt to resolve attendance problems. For example, establish a specific intervention point when all supervisors will discuss absences with employees. Some agencies routinely request medical certification once an employee has been absent for three consecutive days. Your agency might require supervisors to meet with an employee when he or she takes sick leave three times in any two consecutive pay periods.
- The bottom line is that the agency needs to define when management intervention is necessary. Once intervention or corrective counseling occurs, management and the employee will explore ways the employee's attendance can be improved while emphasizing the need for regular attendance. Use intervention practices consistently with all employees.
- Become knowledgeable about other policies that may help deal with job-related problems and stress associated with sick leave. Policies are revised occasionally, so it is important to check that the referenced copy is the most current.

#### **Additional State Policies and Practices**

Montana state government recognizes that its employees will incur a certain amount of absence for conditions provided under the Sick Leave Policy. Additional direction is provided in other policies which deal with more long-term disability and maternity



leave, parental leave, and access to grants of sick leave from coworkers or the Sick Leave Fund. A brief description of these policies and practices follows:

### DISABILITY LEAVE

Despite an employee's or manager's best intentions and efforts, it is not always possible to anticipate or avoid a long-term leave of absence due to a disability. Management may determine through a case-by-case review that there is an alternative to a prolonged absence. Options may include, for example, establishing an alternative work schedule, reduced hours, or telecommuting from home. When a long-term absence is unavoidable, management and employee should review the agency's practices regarding leave requests and examine other options such as alternatives for handling the vacant position, determining the length of the absence, and identifying an expected date of return, and how to manage insurance coverage during the absence.

Under the state's Disability and Maternity Policy 3-0315, leave is available for an illness, injury (including industrial accidents), disability due to pregnancy or other condition which prevents the employee from performing some or all of his or her job duties. Employees may request to use leave for which they are eligible including sick leave, annual leave, compensatory time or leave without pay.

An agency may develop procedures for requesting leave due to a disability according to the state's Disability and Maternity Policy. For instance, medical certification may be required to document the medical condition prior to, or at any time during, the leave. A request for leave longer than six weeks must include medical certification. Agencies may approve a combination of leave such as 20 hours of paid leave and 20 hours of leave without pay during a workweek.

The State Compensation Mutual Insurance Fund administers workers' compensation rules. Procedures regarding accident reporting, documentation, and compensation payment for workers' compensation benefits are found in ARM 2.29.804 et seq., and in Montana Code Annotated, Title 39, Chapter 71. Periodically, managers will want to review their agency policy for filing accident claims.

The following list provides several facts about workers' compensation benefits that will be helpful to managers and employees:

- State employees are eligible to receive workers' compensation benefits starting with the seventh day loss of wages, or after six days or 48 hours loss, whichever is less (39-71-736, MCA).



- Employees are not eligible to use sick or vacation leave benefits and receive workers' compensation benefits at the same time.
- 39-71-317(1), MCA states that it is unlawful to terminate a worker for filing a workers' compensation claim.
- 39-71-317(2), MCA provides for a two-year hiring preference when an injured worker is capable of returning to work and has received a medical release to return to work. The preference applies only to employment with the employer for whom the employee was working at the time of injury and for a vacant, comparable position that is consistent with the employee's physical condition and vocation abilities.

During a lengthy leave of absence for which leave without pay is used, it is possible to continue medical insurance coverage for a year through the state's employee benefit plan, usually by the employee self-paying the entire monthly premium. Information regarding coverage for employees who become totally disabled, coverage for employees who become totally disabled, coverage for dependents and varying lengths of coverage for employees on a disability-related leave will be found in the State of Montana Employee Benefits Plan Booklet. You may obtain a copy from your personnel or payroll representative or from the State Personnel Division, Mitchell Building, Room 130, Helena, Montana 59620.

#### ***When is a long-term absence a "hardship"?***

One of the most difficult decisions for an agency surfaces when a long-term absence creates such a hardship that the agency must terminate and replace an employee. Discharge is discussed generally in the Disability and Maternity Policy 3-0315:

##### **2.21.912 DISCHARGING A DISABLED OR HANDICAPPED EMPLOYEE**

(1) A disabled or handicapped employee who fails to perform his or her job in a satisfactory manner or whose behavior interferes with or disrupts agency operations may be subject to disciplinary action, up to and including discharge, in compliance with the state Discipline Handling Policy, ARM 2.21.6505 et seq.

This rule also states that an agency must explore reasonable accommodation when discharge is due to a handicap, or document that an accommodation would create an undue hardship for an agency. Considerations prior to a termination will include reinstatement rights afforded in some circumstances. For example, an employee receiving disability retirement has reinstatement rights provided in 19-3-1102(3), MCA. A woman who is on leave due to a pregnancy-related disability also has



reinstatement rights provided by laws and state rules. (See discussion in the following section, **Maternity Leave**.)

Some agencies have defined a maximum length of leave allowed under long-term leave and disability policies. For example, one agency policy states that employees will be terminated after a nine-month leave of absence due to a disability, based on the distinction between the terms "temporary" and "permanent", as used in state policies. (A temporary employee who is hired during a long-term leave of absence becomes a permanent employee after nine months of continuous service.) Other agencies consider a one-year leave the maximum allowable time before an employee is terminated.

Even with such time frames, long-term absences are based on unique circumstances and require case-by-case management. However, there are some steps that agencies can take to manage each situation. These include regularly monitoring the medical condition and physician's prognosis regarding recovery and ability to perform the job duties, examining the impact that the absence has on the agency's productivity and services, and being aware of the impact that the absence is having on other employees in the work unit.

## **MATERNITY LEAVE**

The Montana Maternity Leave Act (49-2-310 and 49-2-311, MCA) and related administrative rules found at ARM 24.9.1201 et seq. and the Disability and Maternity Policy (3-0315, Montana Operations Manual, Volume III) address leave due to a pregnancy-related disability. Requests for a pregnancy-related leave must be made according to the type of leave requested. Leave may include the use of sick leave, annual leave, compensatory time or leave without pay. As with any leave, it is advisable to discuss it with the immediate supervisor as far in advance as possible.

Six calendar weeks after the birth of a child is considered a reasonable period of recovery from a temporary disability due to childbirth. If the employee requests a longer leave, medical certification that the additional leave is necessary will be required. When a woman indicates that she intends to return to work following her maternity-related leave, the Montana Maternity Leave Act provides that she will be reinstated to her original job or to an equivalent position with equivalent pay, seniority, retirement, fringe benefits, and other service credit when she signifies her intent to return from her pregnancy leave. The Human Rights Commission administers the Maternity Leave Act and rules for all employers in Montana.



## PARENTAL LEAVE

A new state law, 2-18-606, MCA, provides Parental Leave to permanent state employees. Birth fathers and adoptive parents may take a reasonable leave of absence up to 15 days immediately following the birth of a child or placement of a child with the employee for adoption. The employee may request to use sick leave, annual leave, compensatory time or leave of absence without pay as parental leave.

## SICK LEAVE FUND

The Sick Leave Fund program provides that pooled sick leave may be available to qualifying employees who suffer an extensive illness or injury. This program allows an employee to donate up to 40 hours of sick leave to the Sick Leave Fund in a 12-month period or donate directly to another employee with an immediate need. An employee may receive 160 hours of donated sick leave in any 12-month period.

Employees must have a minimum balance of 40 hours of sick leave remaining after they may contribute to the Sick Leave Fund or provide a direct grant. To participate in either program, an employee must complete the 90-day qualifying period to use sick leave. Complete eligibility requirements are found in the Sick Leave Fund Policy, 3-0311, Montana Operations Manual, Volume III, (Arm 2.21.801 et seq.). Requests to enroll in the Sick Leave Fund or provide direct grants are made through your agency personnel or payroll representative. The Employee Benefits Bureau in the State Personnel Division may be contacted for additional information.

## WORK AND FAMILY POLICIES AND PRACTICES

Striking the balance between work and family is never easy, and the state has several practices and policies to assist employees with dependent care needs.

The Alternate Work Schedules Policy 3-0220, Montana Operations Manual, Volume III, may be used to design non-traditional work schedules so employees can combine personal and work responsibilities more flexibly. Some people call this practice "flex time," since it allows employees to arrive or leave at times other than the usual "8 to 5" schedule. Because of specific job responsibilities or 24-hour coverage requirements, this benefit is available to most, but not all state government employees.

Personal phone calls as provided by state rules, may be allowed to children, teachers, doctors, day-care centers and baby sitters, and for other essential personal business. Calls must be kept to a minimum and not interfere with state business. Personal long-distance calls may not be charged to the state and later reimbursed. (The



Telecommunications Bureau of the Department of Administration adopts this rule. For the full text, see Administrative Rules of Montana 2.13.102, Use of the State's Telecommunications System.)

Job Sharing was formally established as an option for Montana State employees by the Montana Legislature in 1983. Job sharing pools the talents and energies of two part-time employees to perform the work of one full-time job.

Studies document advantages of well-planned job sharing, including increased production, lower turnover and higher morale, lower overtime costs and better job coverage during illness or vacation leave. For additional information about planning for a job-share situation, you may obtain a copy of the Job Sharing Guide in the Montana Operations Manual, Volume III. You also may obtain a copy of the guide from the State Personnel Division, Department of Administration.

Dependent care providers for sick family members may be available through home health care organizations, child care resource and referral services, or college "babysitting lists." Call the local Chamber of Commerce or college campus to find out if these services are available in your community.

### CONCLUSION

In the long run, employees and managers share the same goal—to get the work done effectively and efficiently within a supportive work environment. Absences may interfere with that goal without advance planning that is flexible and sometimes creative. Corrective measures may be explored when performance is impacted by an employee's absence. Montana state government offers supervisors and employees options for dealing with problems related to sick leave, including established policies and practices and information about dependent care assistance.

For additional information about your agency sick leave policies and practices, contact your personnel representative or call the State Personnel Division at 444-3871.

